IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5897 OF 2004

Prahalad Ajwani ... Applicant

versus

The State of Maharashtra & anr. ... Respondents

...

Mr. Subhash Jha, i/by Law Global, for the Applicant.

Mr. A.S. Gadkari, A.P.P., for Respondent No.1.

Mr. Ejaz Khan, for C.B.I.

...

CORAM : A.M.KHANWILKAR,J.

19th January 2005

P.C.:

1. Heard Counsel for the parties. Perused the further affidavit filed by the wife of the Applicant sworn on 18th January 2005, as well as the affidavit of the Additional Superintendent of Police, Central Bureau of Investigation, dated 19th January 2005.

2. The moot question in this case is: whether the condition imposed by the lower Court requiring the Applicant to furnish bond in the sum of Rs.10 lakhs with one surety for the like amount can be said to be excessive? It is not in dispute that two cases are pending against the Applicant. In the present case, the allegation is regarding demand made by the Applicant to the tune of Rs.1,50,00,000/- (Rupees one crore fifty lakhs) out of which Rs. 60 (sixty) lakhs is allegedly already received by the Applicant. In the other case, during the investigation of the present offence, the C.B.I. has come across unaccounted money from the premises in possession of the Applicant or belonging to the Applicant above Rs. 7 (seven) crores in cash. It is perhaps on that basis the Court below thought it appropriate to impose condition requiring the Applicant to furnish bond in the sum of Rs. 10 lakhs with one surety in the like amount, though the Applicant was entitled for bail on account of default in view of the mandatory requirement of section 167, Cr.P.C.

3. To get over this position, Counsel for

the Applicant relied on the decisions, which are referred to in my order dated 14th January 2005 to contend that in no case even the Supreme Court has imposed condition requiring furnishing of bail bond for such huge amount, as has been done in the present case. According to the Applicant, even in the popularly known Fodder Scam case, the accused were released on bail on furnishing bond in the sum of Rs. 1 lakh only as recently as in year 2002.

4. On the other hand, Counsel for the Respondent C.B.I. submits that having regard to the peculiar facts of the present case, and the conduct of the Applicant before arrest, as well as after arrest during the investigation and the conduct of the daughter of the Applicant in not making herself available for investigation during the crucial time, if taken into account, there is all possibility that the Applicant will not make himself available at the time of trial and to secure his presence, condition as imposed by the Court below cannot be said to be excessive.

5. It is, however, fairly accepted by the

Counsel for the Respondent C.B.I. that in the other case pending against the Applicant, the lower Court has now directed release of the Applicant on bail on furnishing bond in the sum of Rs. 8 lakhs only. Since that condition has not been questioned and has been accepted by the Respondent, there is reason to proceed on the assumption that the said amount of bond satisfies the apprehension entertained by the Respondent about securing presence of the Applicant at the trial. As the Applicant will have to offer bond in the sum of Rs. 8 lakhs in the second case, in addition to the bond in the present case obviously, he will make himself available for the trial of that case and since both the trials will have to proceed one after the other, securing presence of the Applicant is not in doubt. Taking overall view of the matter, and having regard to the fact that the Applicant will have to furnish bond in the sum of Rs. 8 lakhs in the companion case and which order has not been questioned by him so far, the Applicant can be permitted to furnish bond in the present case in the sum of Rs. 5 (five) lakhs, the same will secure the ends of justice.

6. The order as passed by the Court below will, therefore, stand modified by requiring the Applicant to furnish bond in the sum of Rs.5 (five) lakhs with one or two local sureties in the like amount. It will be open to the Applicant to provide cash security in the sum of Rs. 5 lakhs. Ordered accordingly.

3. Application disposed of on the above terms.

(A.M.KHANWILKAR,J.)